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COMMITTEE AGAINST TORTURE

Eighth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 110th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 30 April 1992, at 4.10 p.m.

Chairman: Mr. VOYAME

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* The summary record of the first part (closed) of the meeting appears as document CAT/C/SR.110.

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The public meeting was called to order at 4.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)

Initial report of Italy (continued) (CAT/C/9/Add.9)

1. At the invitation of the Chairman, Mr. Citarella, Mr. Mezzalama and Mr. Pecenko (Italy) took seats at the Committee table.

2. Mr. CITARELLA (Italy), replying to questions raised in the course of the discussion of his country's initial report, said that in general conformity with the provisions of international treaties was ensured by adherence to the principle that such obligations prevailed over domestic law. However, when such instruments were ratified by Italy, they were often supplemented by a statutory enactment adopted in Parliament.

3. Monitoring of compliance with obligations under international human rights instruments was the responsibility of the Interministerial Committee for Human Rights, which produced periodic reports on that activity.

4. One member of the Committee had pointed out that there was no specific reference in the report to articles 8 and 9 of the Convention. It should be mentioned that those two articles were covered by the commentary on article 3, which also dealt with issues falling within the scope of article 9.

5. A question had been raised regarding the duration of preliminary investigations: the general rule was that such investigations should not normally exceed 18 months, but in any case the maximum was 2 years.

6. Disciplinary procedures should normally be completed within a period of 90 days, and provision was made for the suspension of a law enforcement official during the period of the proceedings. Particular attention was being given to ensuring that those responsible for enforcing the law were familiar with human rights priorities, and a textbook had been prepared with a view to promoting greater awareness in police academies of the relevant aspects of constitutional and criminal law.

7. In connection with article 5, he said that in Italian law the principle aut dedere aut judicare prevailed, and was in particular applicable in cases of extradition, which were always subject to a decision by the appropriate judicial authority: ultimately, of course, it was up to the political authorities to determine whether an extradition order should be carried out. Such an order would not be acceptable if the accused person might be liable to the death penalty in the country of jurisdiction. Similarly, extradition would not normally be granted in cases where the offence was of a political nature, since the right to political dissent was enshrined in the Constitution.

8. With regard to conditions in pre-trial detention centres, he said that responsibility for ensuring that justice and equity prevailed in such establishments lay with magistrates. Although there was no system for compensating persons claiming that they had been ill-treated while in detention, there was an advisory board to investigate conditions of custody, which was authorized to initiate special inspections.

9. Mr. MEZZALAMA (Italy), referring to the question of the duration of preliminary investigations, said that in certain very serious or complex cases, such as those involving terrorism or foreign jurisdiction, the Government Procurator's Office was entitled to request a period of investigation exceeding the statutory 18 months.

10. Mention had also been made of solitary confinement. Detention in isolation was permitted only for health reasons, and normally involved exclusion from communal activities for a period of up to two weeks.

11. Torture was not dealt with as a specific offence in Italy's legal system. With regard to article 3 of the Convention, the initial report (CAT/C/9/Add.9) referred, inter alia, to the rules introduced by the new Code of Penal Procedure. Articles 1 to 4 of the Convention had been incorporated into domestic law. Since, therefore, the Convention's provisions were automatically applied, it had been deemed unnecessary to provide for specific sanctions against torture per se. Allegations of mental torture were for jurisprudence to interpret.

12. Generally speaking, the police were empowered to arrest persons only for offences deemed especially grave or when a person had been apprehended in flagrante delicto. For certain types of offence, arrest was not mandatory. Persons could be held in custody only under certain conditions, such as on suspicion of having committed a very serious offence as defined in the Penal Code. In all cases, the Government Procurator's Office must be informed immediately; the suspect must be duly cautioned and informed of his right to a defence counsel, and his family must also be informed immediately if he so wished. All persons detained must be brought before a magistrate within 24 hours. Unless there was an order for release or removal to a medical institution, the person detained must be brought before an examining magistrate within 48 hours, in the company of a defence counsel. Any interrogation must be conducted in the presence of a judge and officially recorded. Police were allowed to interrogate a suspect alone only for purposes of establishing identity.

13. Mr. PECENKO (Italy) said that Italy had been involved in only four cases of recourse to the European Court of Human Rights. Of those, two had been withdrawn, one had been deemed not receivable, and in the other no violation of human rights had been found to have taken place. States of emergency had been declared on several occasions; in general, the declaration of a state of emergency did not sanction any suspension of human rights.

14. The Police Department, an important section of the Ministry of the Interior, was responsible for recruitment and training, including programmes to inform law enforcement agents about human rights and duties pursuant to international instruments and domestic law alike - a subject which was given careful attention. Occasional instances of alleged ill-treatment by the police were inevitable. In general, however, police officers acted with a strong sense of responsibility; and their actions were also, of course, always under the rigorous scrutiny of bodies such as the press and NGOs. He briefly described several cases of alleged ill-treatment by the police, in which the police had been exonerated, and of one case, concerning a person who had recently died in custody, in which an investigation had been initiated by the Government Procurator's Office within two days; details had not yet been released, since the matter was sub judice. He also referred to two incidents at prisons. In one, investigations had been initiated by the Department of Penal Investigation as well as the Government Procurator's Office; no criminal liability having been established, the case had been closed. In the other, an investigation opened immediately by the Government Procurator's Office had not yet been completed; nevertheless, the Department of Penal Investigation had itself instituted proceedings against two prison officers.

15. The CHAIRMAN thanked the Italian delegation for its prompt replies.

16. Mr. GIL LAVEDRA (Country Rapporteur) commended the Italian delegation for its response to the questions raised. No reply had yet been given, however, to those about article 15 of the Convention, or to the point raised by Mr. Sorensen, concerning article 2, paragraph 3, of the Convention, about obedience to superiors as an excuse for a possible offence of torture. Nor had the question of pre-trial detention as such been mentioned. And he would like clarification as to whether or not the State could be held liable for the acts of its servants. He also wondered whether incommunicado detention could be ordered solely on medical grounds or whether a magistrate was empowered to order it. He would like to have more details about confidentiality of proceedings, and a reply to a question about the rules and practices applicable to medical examination at the time of detention.

17. There were several other issues which clearly could not be dealt with immediately, or for which legislative texts would be useful; replies on those points could be appended to an additional report.

18. Mr. MEZZALAMA (Italy) said that the police had specific instructions about the conduct of interrogations, and especially their first phase, which usually took place in a police station. Interrogation was conducted only in the presence of a judge, and a record of the proceedings was kept. As to incommunicado detention, a time-limit of 24 hours was imposed.

19. There was no office of ombudsman in Italy, but a similar service was provided by the Freedom Court, whose magistrates were empowered to assist in cases where a department was dilatory or neglectful of a citizen's legitimate interests, although they were not empowered to try cases in that area. The Freedom Court was also competent to review, within a period of eight days, any decisions which restricted personal freedom.

20. Rules for compensation and codes of behaviour for officials were set forth in handbooks, copies of which had been provided to the Committee; all officials were obliged to study them.

21. Article 51 of the Penal Code provided that the performance of a duty on behalf of a public body did not preclude liability to punishment if an act which constituted an offence was committed. Moreover, as stated in paragraph 84 of the initial report (CAT/C/9/Add.9), article 191 of the new Code of Penal Procedure provided that evidence obtained by illegal methods might not be used; since the Convention's provisions had been incorporated into domestic law, the use of torture was clearly included in that provision.

22. The CHAIRMAN, speaking as Alternate Country Rapporteur, invited the Committee to begin the second round of questions. He noted that a relatively small number of cases in Italy had hitherto been referred to the European Court of Human Rights, and only in the past few years - probably because awareness of the European Court and its competence was still growing. He wondered whether the introduction of provisions into domestic law by the Act of Ratification, referred to in paragraph 55 of the initial report, was relevant, since the provisions in question did not cover the offence of torture as such or establish any rules of competence.

23. Mr. MEZZALAMA (Italy) said that, as he understood it, most members of the Committee seemed to consider that the existence of certain provisions in Italian legislation made up for the lack of a definition of torture as such. His delegation considered that the Act of Ratification and the fact that the Penal Code contained provisions covering offences assimilable to torture were not incompatible but complementary. The Convention had been ratified by a special Act of Parliament in order to fill gaps in the Penal Code and take account of the definition of torture in the Convention, whereas international treaties were usually introduced into Italian domestic law through the adoption of wording authorizing such introduction. The relevant Act would be supplied to the Committee.

24. Mr. DIPANDA MOUELLE endorsed the thanks expressed by the Country Rapporteur and Alternate Country Rapporteur to the Italian delegation for its excellent replies to the questions asked by members of the Committee.

25. He asked for further information about the novel concept of the Freedom Court: what was its jurisdiction, of whom was it composed, how was application made to it and did it cover the whole of Italy? He also wished to know whether the preliminary inquiries lasting a minimum of 18 months and a maximum of 24 in fact corresponded to pre-trial detention.

26. He had understood that in Italian case-law the concept of torture had been extended to moral and psychological violence, and wondered whether there were not some risks in such an extension, since interpretation in criminal law was restrictive. Was there provision in the Act of Ratification for punishing such offences? How were judges appointed and dismissed and did habeas corpus exist in Italy?

27. Mr. MEZZALAMA (Italy) explained that judges were recruited by means of a competitive examination organized by the State. Appointment, transfer and disciplinary matters were governed by the Higher Council of the Magistrature, whose independence was enshrined in the Constitution and which was chaired by the President of the Republic. The system was carefully designed to ensure that judges were impartial and free from external pressure.

28. Mr. EL-IBRASHI inquired, in connection with the Act of Ratification, what would happen if Parliament should introduce a law that ran counter to the Convention. What would be the consequences when the time-limit of two years for preliminary inquiries expired? Did a person accused of a serious offence have the right to a lawyer appointed by the court even if he was indigent?

29. He had understood that extradition was not granted to countries where the death penalty was in force, but wondered what the position would be in cases where the Italian courts had no jurisdiction. In connection with article 14 of the Convention, he believed that there was no general rule in Italy governing the compensation of victims of torture, but the State had civil liability for the acts of its servants.

30. Mr. MEZZALAMA (Italy), replying to Mr. El-Ibrashi's first question, said that it was always possible that the Act of Ratification could be amended by Parliament, but so could the Penal Code or indeed any legislation.

31. Mr. CITARELLA (Italy), replying to Mr. Dipanda Mouelle's question about the Freedom Court, explained that it was a special section of the Criminal Court composed of three judges competent to consider all cases relating to personal freedom. Their judgement was delivered within eight days.

32. In reply to Mr. El-Ibrashi's question about the consequences of expiry of the two-year period for preliminary inquiries, he said that after the expiry date the examining magistrate set a period of 10 days for submission of the final report, failing which the case was closed.

33. Mr. GIL LAVEDRA (Country Rapporteur) observed that the discussion with the delegation of Italy had been most fruitful. Replies had been received to a great many of the Committee's questions. The information requested on the organization of the legal system and the new Code of Penal Procedure, as well as the statistics requested by Mr. Khitrin, should be forwarded to the secretariat. The replies to the questions still outstanding could be included in Italy's next periodic report and should cover the possibility of bringing national legislation into line with international instruments.

34. The establishment of the Freedom Court and of interministerial committees were good examples of Italy's attachment to human rights and its international commitments. It would be interesting to see the results of the legislation adopted in recent years.

35. Some doubts raised by members of the Committee had not been entirely dispelled. In particular, the Committee did not find the method of integrating international standards into domestic legislation by way of the Act of Ratification entirely satisfactory, but it looked forward to receiving the relevant legislation so as to give further consideration to the matter.

It requested that consideration should be given by the Italian authorities to the possibility of including in domestic legislation the definition of torture in the Convention, together with an appropriate punishment. Attention should also be given to speeding up the legal process of domestic remedy. The Committee would be interested to learn of the experience gained in the enforcement of the amendments to the Code of Penal Procedure. Several members of the Committee had had reservations about the Italian system of compensation for victims and believed that, in accordance with the Convention, the State should be responsible for the acts of its servants.

36. The Committee had been honoured by the inclusion of eminent persons in the Italian delegation. It had been impressed by their replies and looked forward to working with them again in the future.

37. The CHAIRMAN, speaking as Alternate Country Rapporteur, echoed those remarks. A few questions, which would be found in the summary records, remained to be answered or elaborated on in the next report; the question of the definition of torture, in particular, needed further consideration. The Committee had absolutely no doubt that torture was not systematically practised in Italy, and the cases to which reference had been made probably involved ill-treatment by the police. However, the State had to deal with such cases energetically and swiftly, and the Committee would like to have examples of such measures in the next periodic report, due in a little under two years' time.

38. Mr. LORENZO endorsed the conclusions of the Country Rapporteur and Alternate Country Rapporteur. He thanked the delegation of Italy for its replies and stressed the importance of the establishment of the interministerial committees, a positive step towards involving the whole of Italian society in the enjoyment of human rights.

39. Mr. SORENSEN thanked the delegation of Italy for its excellent replies to the questions asked by members of the Committee. He suggested that special chapters on torture and the Convention against Torture should be included in the handbooks issued to Italian police personnel, which should also be distributed to members of the medical profession.

40. The CHAIRMAN said he took it that the conclusions reached by the Country Rapporteur and Alternate Country Rapporteur and the suggestion by Mr. Sorensen were acceptable to the Committee.

41. It was so agreed.

42. The CHAIRMAN said that the Committee's conclusions would be set out in the summary record and sent to the Government of Italy. With the help of the Italian delegation, the Committee had been able to further its task of aiding States parties to fill any gaps in their legislation in an excellent atmosphere.

43. Mr. MEZZALAMA (Italy) said that his delegation was gratified by its particularly stimulating and fruitful discussion with the members of the Committee. It would transmit to the Italian authorities the Committee's recommendations, in particular the request for a definition of torture to be included in domestic legislation, and would include details of the new Code of Penal Procedure in the next periodic report. Those details had in any case been sent in the last report on civil and political rights.

44. Even before the next periodic report, the replies to some of the questions raised by the members of the Committee would be made available to the Special Rapporteur on Torture appointed by the Commission on Human Rights.

The meeting rose at 6.15 p.m.